



Province of British Columbia

CONFLICT OF INTEREST COMMISSIONER

The Honourable H.A.D. OLIVER, Q.C.

ANNUAL REPORT 1998-99

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May 31, 2000

The Honourable Bill Hartley, MLA
Speaker of the Legislative Assembly
of British Columbia
Room 207, Parliament Buildings
Victoria, British Columbia
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Mr. Speaker:

I have the honour, pursuant to section 15 of the *Members' Conflict of Interest Act* (RS Chapter 287), to present my Annual Report for the period August 7, 1998 to December 31, 1999.

Yours sincerely,

H.A.D. Oliver
Commissioner

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ANNUAL REPORT

OF THE CONFLICT OF INTEREST COMMISSIONER

1998-99

Introduction

This seventh Annual Report of the Commissioner (an independent Officer of the Legislative Assembly) covers the period August 7, 1998 to December 31, 1999. Past reports have covered periods ending on a variety of different dates. It seems more satisfactory for future reports to cover the calendar year.

Public Perception

I once again remind readers that the effective functioning of government in any parliamentary democracy must be firmly founded in the respect in which the members of the public held their government in general and their elected representatives in particular.

The reputation of governments and of their leaders and parliamentarians has, in the past year, been bedevilled by major scandal and allegation of sleaze and misconduct world wide: the list (by no means exhaustive) includes; Austria, Burma, China, Eire, France, Germany, Ghana, Great Britain, Israel, Italy, Japan, Mexico, Nigeria, Pakistan, Peru, Russia, Uganda, and the Ukraine. By comparison, problems brought to my attention in this province arising under the *Members' Conflict of Interest Act* do not pale into insignificance -- for there can not be an insignificant conflict of interest -- but generally fail to rise to a point on the scale of gravity of many of those observed abroad.

Whether this is due to differing levels of ethical standards or to the growing readiness of members of the Legislative Assembly to consult the conflict commissioner before committing themselves to some course of action which may, in retrospect, turn out to have been unacceptable, the fact remains that I have not found it necessary in 1999 to make any findings of

serious infractions of the *Members' Conflict of Interest Act*. I make no comment on any complaint presently under investigation or inquiry by my office.

Weighing the Evidence

Let me, in this connection, comment on the apparent readiness of some members of the public (and occasionally of the media) to conclude that any allegation of misconduct by a Minister or a Member constitutes an adverse finding and that dire punishment must immediately follow. Or, in the words of the Red Queen in *Alice in Wonderland*:

"Sentence first, verdict later. Off with his head!"

Similar ill-considered criticism is heard from time to time in relation to the decisions of judges or juries in high profile trials.

The commissioner should seek to prevent breaches of the Act when he can and when allegations of infractions are brought forward should produce a full report as quickly as possible consistent with the need to undertake a fair, thorough and professional investigation. He must bear in mind his duty to the Legislative Assembly and to the public which includes not only protecting the integrity of the political process, but also ensuring that in any serious case no finding adverse to a Member should be made without clear and convincing proof of misconduct -- always remembering that a single ill-considered word or unfair phrase in his Opinion can seriously affect or permanently destroy a promising political career.

There will always be those who:

- Unprejudiced by any familiarity with the evidence.
- Unbiased by any knowledge of the submissions made before the Commissioner.
- Uninfluenced by the centuries-old precept to listen to both sides of an argument, will leap to judgement and will write to the media to condemn the supposed offender or the decision-

maker. These critics appear to resent any suggestion that allegations of political wrongdoing should be decided by something more than gut reaction.

Sadly, an occasional article in the press will condemn as unduly "soft" a finding following an investigation, that the complaint is unsupported by the evidence, or that an infraction was unplanned or unintended.

It should be borne in mind that the task of this office is, essentially, the prevention of political corruption rather than the detection or punishment of purely technical or inadvertent breaches and that numerous complaints are brought before me by members of the public unfamiliar with the specific prohibitions contained in the *Members' Conflict of Interest Act* or with the limits placed on my jurisdiction. Every once in a while a complaint may originate with political opponents seeking to use the Act as a stick with which to belabour an MLA of another political party for purely partisan ends. This is, of course, permissible but does tend to produce occasional allegations of somewhat picayune infractions.

The Conduct of Members

My colleague, the Honourable Robert C. Rutherford, in his 1998/99 Report to the Legislative Assembly of Ontario observes as follows:

"Government is an extraordinarily serious business. Wisely run, it is the repository of the democratic tools that safeguard the fundamental human rights of citizens. It is also the vehicle for promoting material well being and ensuring a measure of social justice within our society. Unwisely run, or run without the highest standards of integrity, government can become the vehicle for cronyism, corruption and the decline in the values so fundamental to democracy. Integrity in government is therefore of compelling interest to us all. Without the abiding trust of citizens in our political and governmental institutions - institutions that are so central to our way of life - democracy can not function."

I echo Commissioner Rutherford's remarks but point out that "abiding trust of citizens in our political and governmental institutions" is something that must be earned by transparent honesty, not merely on the part of our public institutions themselves, but of every individual who is a cog

wheel in the machinery of government and, above all, of every individual whom we elect to represent us in the seats of power of our province and nation. The unedifying spectacle of allegedly unethical conduct by senior political figures in Europe, Asia and the Americas must not mislead any of us in this province into the belief that a lowering of ethical standards of conduct in public life is gradually becoming acceptable.

I do not believe that in British Columbia elected political office is viewed as an attractive career by the greedy, the corrupt or those anxious to build up secret offshore bank accounts at the expense of the taxpayer.

I do, however, believe that in the course of political life, elected members may from time to time be exposed to insidious or unexpected temptations: I see it as one of the most useful functions of my office to serve members as a pilot around the concealed rocks, sunken wrecks and dangerous shoal waters which may be more readily discernible to one who spends much of his time in the detection of these frequently hidden hazards. At the same time, I recognize that there are many members of the House whose own experience and navigational skills are such as to enable them to avoid the vast majority of such unexpected hazards and to steer the ship of state to a safe harbour with little outside assistance.

The Commissioner as Advisor

Members of Cabinet and of the Legislature have been consulting the Commissioner for informal advice with ever-increasing frequency, resulting in relatively few complaints under the *Members' Conflict of Interest Act*. The Commissioner continues to be available for informal consultation by members in person or by telephone at any time during and outside regular working hours. All such consultations are confidential and are aimed at assisting the member to view the member's problem from various different angles and to assist the member in arriving at a carefully considered decision as to the course he or she should pursue. On occasion a member may, as a result of such discussion with the Commissioner, reach the conclusion that though the course originally intended did not involve a breach of the statutory conflict of interest rule, the political wisdom of the proposed course remains questionable. It is the Commissioner's practice to point

out that the question of political wisdom is no concern of his but undoubtedly that question is one of the surrounding circumstances, careful consideration of which will assist the member in arriving at a proper determination.

Common sense tells us that a situation in which members are able to avoid questionable conduct in the first place is infinitely preferable to one resulting in a string of complaints necessitating formal investigation or inquiries.

Investigations versus Inquiries

From time to time inquiries or complaints are received from members of the Legislature or of the media or of the public with a request to "put one of your people onto this". Readers are reminded that the entire staff of the office of Conflict of Interest Commissioner consists of the Commissioner (a half time officer) and of two administrative assistants who job-share a single appointment.

The view held by some that the Commissioner operates some form of small police department is based on a misconception.

My general policy is quite simply this: I seek, wherever possible, to avoid infractions by members of the *Members' Conflict of Interest Act* by strong emphasis on my advisory function and members, almost without exception, have readily availed themselves of the assistance offered, sharing my view that prevention is better than cure. When formal complaints have come in, these have wherever possible been dealt with by way of **investigation**. The Commissioner has power under section 21(2) of the Act to order a **formal Inquiry** and if he does so enjoys certain of the powers of a Supreme Court Judge under sections of the *Inquiry Act*. An inquiry, however, is a slow and costly procedure necessitating the retaining of commission counsel and the employment of court reporters. This is an expense and a delay which I try to avoid wherever possible. There are, of course, some occasions when it is impossible to save the taxpayers this expense, but wherever I properly could I have endeavoured to deal with complaints by way of investigation.

One of the problems which this has entailed is that in conducting an investigation I was unable to take evidence on oath or by statutory declaration (powers which, under the *Inquiry Act* I enjoyed only whilst conducting an Inquiry). This has now been remedied by my recent appointment as a Commissioner for taking affidavits.

Pending Inquiry

The year has brought with it one matter which has absorbed much of my time: it is the formal investigation at the request of Cabinet, pursuant to section 19(3) of the *Members' Conflict of Interest Act* of the conduct of the Hon. Glen Clark, MLA for Vancouver-Kingsway. In March 1999, a search warrant was executed at the home of the Honourable Glen Clark, MLA, Premier of British Columbia in relation to a criminal investigation of allegations surrounding an application by a BC Limited Company for the grant of a casino licence.

It was alleged that one of the principals of the company was a friend and neighbour of Mr. Clark's who had played a role in certain construction work at Mr. Clark's home and cabin in the Okanagan.

Under the *Members' Conflict of Interest Act* the opinion of the Conflict of Interest Commissioner with regard to the conduct of a member of the Legislative Assembly or Executive Council (Cabinet) may be requested by a member about his or her own compliance [section 18(1)] or about the compliance of another member [section 19(1)]. Similar requests may be made by a member of the public [section 19(2)], by Cabinet [section 19(3)] or by the Legislative Assembly as a whole [section 19(4)]. By a request dated March 5, 1999, Mr. Clark asked that I review the Cabinet records for the whole of 1998 on an urgent priority basis and that I provide my interim opinion as to whether Cabinet had made a decision at any time during that period to grant approval-in-principle of a gaming licence for the North Burnaby Inn. I immediately proceeded to an examination of the Cabinet records for 1998 and on March 8, 1999 following my review, I released an interim opinion stating that these records disclosed that no such decision was made by Cabinet.

On March 5, 1999 in addition to the request for a review of the Cabinet records, Mr. Clark requested that I provide an opinion pursuant to s. 18(1) as to whether he had been in a conflict of interest in the granting of the approval in principle of a Gaming Licence for the North Burnaby Inn.

On March 12, 1999, the Cabinet made the same request pursuant to section 19(3) of the *Members' Conflict of Interest Act* advising that at the request of Mr. Clark this request should replace his earlier request on his own behalf. The reason for Mr. Clark's request to Cabinet that this matter be dealt with as a Cabinet request is that the Commissioner, acting on a request by a member for an opinion about that member's own conduct pursuant to section 18(1) can merely make a confidential report to the requesting member about that member's own conduct after such inquiries as he thinks appropriate, but does not have power to conduct an inquiry with the same powers to summon witnesses and documents and to take evidence on oath as a commissioner appointed under the *Inquiry Act*.

Following receipt of the Cabinet request under section 10(3) I exercised my discretion to conduct an inquiry, the results of which when completed will be reported to Cabinet.

Having regard to the significant nature of the allegations and to the fact that conduct to be investigated was that of the Premier of the Province, I have thought it appropriate that my investigation and inquiry should be as thorough as possible and a large number of witnesses have either testified already or will do so in the months ahead. Care is being taken throughout to avoid any interference with the criminal investigation. I am, of course, aware of the fact that a criminal investigation may take months or years before it comes to fruition and that there is no indication of whether any criminal charges will be laid against the member or of what such charges might be if a prosecution proceeds. I am mindful of the fact that if a charge is laid, it will then take many months before the commencement of a preliminary hearing which might or might not result in a committal for trial, and if the member were committed for trial, it would then take many further months before the commencement of any trial.

Bearing all these factors in mind, it was my view that I would be in breach of my statutory duty and the letter and spirit of the *Members' Conflict of Interest Act* were I to delay or defer my investigation under that Act until the conclusion of any criminal proceedings.

My Report and Opinion will be delivered to Cabinet at the conclusion of my Inquiry.

Some Referred Questions

1. I dealt during the year with a complaint by the Member for Matsqui respecting compliance by the Member for Powell River-Sunshine Coast alleging failure by the latter to disclose in his public disclosure statements a Supreme Court judgement obtained against him and alleging that forgiveness of a personal debt constituted acceptance of a gift or benefit connected directly or indirectly with the performance of the member's duties of office. After a full investigation I found that non-disclosure of the judgement constituted a breach of the Act but that in all the circumstances the member had acted inappropriately but in good faith. I found further that there had been no breach of the gift or benefits sections of the *Members' Conflict of Interest Act*. In my Opinion, I added a comment that had the member consulted the conflicts commissioner beforehand, placing before him the existing facts, he would have received certain advice: and had the member "followed that course and availed himself of the Commissioner's advisory function, these entire unhappy and embarrassing proceedings would have become unnecessary".

My Opinion was submitted to the Speaker: copies were provided for each member and for the use of the news media. Limitations of space and knowledge of the fact that many of the readers of this Report will be familiar with my Opinion have prevented me from reproducing it in full in this Report, but any reader who is interested in its details may obtain a copy from my office upon request.

2. A multi-national corporation owning a large cemetery -- in its capacity as a member of the public under s. 19(2) -- complained that a member, the owner of a dwelling house adjoining their cemetery, when the corporation had started to cut down a stand of trees separating the

cemetery from the residential area had been personally involved in a protest demonstration on the cemetery grounds with other adjacent property owners and had written a letter of protest to the local city council supporting the council's endeavours to enact a by-law intended to restrict or regulate the cutting of trees in the portions of the cemetery adjoining the residential area, and that the member had done so using official MLA's letterhead.

I delivered my Opinion as follows:

1. Member's participation in protest demonstration was the subject of an application for an injunction to Supreme Court: Commissioner declines to comment.
2. Letter to local council should have been written on personal stationery. The member had for many years been a member of local council -- member's identity as an MLA was a matter of common knowledge on Council regardless of type of stationery used.

Request for Opinions

The following nutshell summaries reflect samples of advice provided by the Commissioner in the past year. These examples are not exhaustive and have been abbreviated due to space limitations. They represent summaries of certain types of issue only and are intended to raise the awareness of members and their staff and to bring to their attention potential problems in the hope that this office will be contacted for advice and guidance whenever it is felt that the experience of the Commissioner and his staff may be useful in assisting members how to proceed or how not to proceed. Since inquiries received and opinions expressed are usually confidential, I have taken certain liberties in altering the fact patterns in some cases to avoid the identification of members and others involved.

- **Issue**

May a minister sit on the board of directors of a foundation which receives funding from the Minister's department?

- **Opinion**

No: this might involve Minister in lending personal advocacy service. Minister may properly serve as a patron.

- **Issue**

A member has been invited to attend a conference sponsored by a National Research Institute dealing with a leading Aboriginal rights court decision. May the member accept an offer of travel expenses and accommodation from the conference organizers?

- **Opinion**

The member has been asked to speak in connection with his duties as an MLA. The expenses to be refunded are not a "personal benefit". He may accept.

- **Issue**

A Crown Corporation wishes to purchase land for an expansion of essential public facilities from a corporation of which a director is also a member of the Crown Corporation?

- **Opinion**

Director gave instructions to the Corporate Secretary that he was not to be involved in any discussions or negotiations, and not to be sent any briefing material normally sent to directors. He made a formal declaration of interest and not only complied with the Crown Corporation's conflict by-law but conducted himself with exemplary nature above and beyond the strict requirement of the conflict by-law.

- **Issue**

A member's spouse is a consultant with an extensive practice involving hundreds of clients. Is the member required to file statements of material change of circumstances as part of the disclosure process whenever the spouse's firm is retained by a fresh client?

- **Opinion**

New clients may or may not constitute material change. If Provincial Government or a government agency or a Crown Corporation, or someone closely associated with them: file. If not, use common sense. If in doubt, speak to Commissioner.

- **Issue**

A member has received four free tickets to a sporting event. What should the member do?

- **Opinion**

These tickets were a gift or benefit. Member of his own volition contacted donors, at whose suggestion he donated their true value to a charity.

- **Issue**

A parliamentary secretary has been asked to make recommendations to his Minister involving departmental dealings with a corporation: the parliamentary secretary in his RRSP owns a quantity of shares in a mutual fund, which in turn owns shares in the corporation in question. What should the parliamentary secretary do?

- **Opinion**

The mutual funds holdings, and the parliamentary secretary's own holdings in the mutual fund, are so minimal that no reasonably well-informed person could think that his ability to perform his official duty must have been affected.

- **Issue**

A member is on the board of a crown corporation: a relative of the member's spouse is applying to that corporation for employment in a junior capacity. What is the member's duty?

- **Opinion**

Job applied for would not normally come to Board's attention. A declaration of interest to management would merely draw attention to a connection of which they were probably unaware. Do not intervene. Do nothing.

- **Issue**

A constituency staff employee works for a member as well as sitting on the board of a trust over which the member exercises ministerial responsibility.

- **Opinion**

Act does not prohibit this. Commissioner declined to comment on the political wisdom of such an appointment.

- **Issue**

A member has been invited to attend a dinner concert in his riding. May he accept the invitation and is he required to disclose the ticket under section 7?

- **Opinion**

A member should not be expected to buy opening night tickets to everything in his riding. Many sponsoring bodies are honoured by the presence of the elected representative of the citizens of the community. Section 7 allows acceptance. File disclosure statement under s. 7(3).

- **Issue**

A member's daughter had applied for and been granted a BC Arts Council grant.

- **Opinion**

Daughter's decision to apply was solely her own, she prepared all documentation -- which was never seen by member -- she made own application in every way independent of member. Acceptance by daughter is entirely appropriate.

- **Issue**

A member was invited by the British government to tour certain public service restructuring being developed in Britain. The British government would pay for costs, but not airfare. Was such an invitation acceptable?

- **Opinion**

Member is opposition critic for the appropriate area of interest. Acceptable.

- **Issue**

A minister inquired about his participation in discussions relating to a new post-secondary training program where there was a possibility of his young son benefiting from the program in the future.

- **Opinion**

The class of students benefiting from new programs will exceed over 200,000 over next four

years. Any benefit to son is remote and would constitute an incidental benefit to a "broad class of electors". No conflict, real or apparent.

- **Issue**

A member was offered a holiday flight paid for by accumulated air miles by a personal friend.

- **Opinion**

The relationship is of 10 year standing -- personal and neither of a political nor a business nature. No business relationship is anticipated. Nothing brings this within either the prohibition or the disclosure provisions of s. 7 nor does it constitute an "asset" or financial interest within the meaning of s. 16 of the Act.

Public Education

I continue to give talks to and conduct seminars for a variety of organizations, including university schools of public administration, faculties of law and political science, service clubs, high schools, and other citizens groups interested in good government, the avoidance of political corruption, and the functioning of the Office of Conflict of Interest Commissioner. I have participated in radio and television broadcasts and have from time-to-time contributed to the correspondence columnists of newspapers of the subject of the functioning of my Office.

Prospective Candidates

The 36th Parliament comes to an end within the next twelve months and I think it appropriate to repeat on this subject what I have said in my Annual Report for 1997-98:

"I gather from a number of members that they were, prior to election, unaware of the *Members' Conflict of Interest Act* and the extent to which its restrictive provisions were applicable to them. I believe it important that arrangements should be made for all prospective candidates without prior service in the Legislative Assembly to attend an interview with the Commissioner at the very outset of their candidature to ascertain the extent to which the legislation may impact on their private lives. No responsible person should seek any employment, least of all public office, without making inquiries as to the terms and conditions of employment. I believe it important that party leaders, prior to nomination day (whether for a general election or a by-election) should inform prospective candidates that this office is available to provide information and advice with respect to the *Members' Conflict of Interest Act* and should insist that candidates attend for interview with the Commissioner."

Relations with Colleagues in Other Jurisdictions

The Office of Conflict of Interest Commissioner is a lonely one: there is only one such officer in each province or territory and the Commissioner has no colleagues within his jurisdiction with whom common problems can be discussed. Nevertheless some of the matters with which a Commissioner has to deal may have arisen previously, perhaps in slightly different form in other jurisdictions. To avoid the constant exercise of reinventing the wheel, it is useful for the Commissioner to bear in mind that similar Officers exist in virtually each of the provinces and territories of Canada with whom matters of common interest may from time-to-time be discussed.

The Canadian Conflict of Interest Network (CCOIN) is composed of the heads of province-wide or federal government organizations with a major mandate for administering conflict of interest and ethical conduct rules in Canada. The members of CCOIN meet annually to discuss common problems and are in frequent communication with each other with the view to rendering mutual assistance. The 1998 Conference was held in Quebec City at the invitation of the Assemblée Nationale du Quebec. At the conclusion of that Conference, I extended an invitation to the members of CCOIN to hold the final conference of the century in Victoria.

The 1999 Conference in Victoria proved a great success and enabled the members to discuss a variety of topics, some local in nature, others of nation-wide concern.

The members of CCOIN are grateful to the people and the Legislative Assembly of British Columbia for the welcome extended to them, to the Speaker for the Conference facilities made available in the Parliament Buildings, and to the Sergeant at Arms and his courteous and helpful staff for making the Conference a success. Thanks are also extended to my distinguished predecessor, the Hon. E.N. (Ted) Hughes, Q.C. who, in his capacity as Yukon Commissioner of Conflict of Interest, extended hospitality to our guests.

Office Costs

The British Columbia Conflict of Interest Office continues to be operated as modestly and as economically as has been the practice in the past. The budget for 1998-99 was \$189,000 and expenditures over the 12-month period totalled \$185,292.68. I must add a note of caution -- as my predecessor Commissioner Hughes did repeatedly: with the minimum of staff in the office, the retaining of professional services is sometimes necessary. This may occur when preparing confidential opinions for members when complications in the fact pattern make that course advisable. It is especially so during investigations when the retaining of Commission counsel and court reporters (and sometimes of accountants) becomes necessary.

It is in large measure because of this expense factor, which persuades me that whenever possible Inquiries should only be instituted when investigations are not likely to be a satisfactory substitute, that we have not in the past budgeted for a type of procedure which generally only occurs once every few years. Though the financial figures for the past fiscal year may once again be regarded as satisfactory, I warn readers that the on-going Inquiry to which I have referred earlier to in my Report will involve substantial professional fees which were not in our budget estimates and could not reasonably have been anticipated.

Office Operations

My staff consists, as it has for many years, of Jill Robinson and Daphne Thompson who job-share a single appointment as Administrative Assistant.

The accommodation we occupy in the old stables behind the Legislature is spartan. Our furniture has been to some extent scavenged from various storage areas. If the result is aesthetically unimpressive, we remind ourselves that it is not our purpose to impress visitors with the splendor of our surroundings but rather to set a good example: I never forget that I have been a taxpayer for very much longer than a Conflict Commissioner.

I am warmly appreciative of the loyalty and support of my colleagues Jill Robinson and Daphne Thompson. If this office operates smoothly, much of the credit must go to them. I extend my thanks to the Legislative Comptroller, Peter Bray, and his assistants who with care and efficiency watch our income and expenditure and keep the books of my office as an Officer of the Legislative Assembly. My thanks also to the Legislative Librarian and to all the other helpful and courteous staff of the Legislative Assembly. Lastly, I again express my thanks to all members of the House for their continued co-operation.



APPENDIX A



MEMBERS' CONFLICT OF INTEREST ACT**CHAPTER 287***Contents**Section*

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Definitions**1 In this Act:**

"child" includes a person to whom a member has demonstrated a settled intention to treat as a child of his or her family;

"commissioner" means the person appointed under section 14;

"member" means a member of the Legislative Assembly or of the Executive Council, or both;

"private corporation" means a "private issuer" as defined in the *Securities Act*;

"private interest" does not include an interest arising from the exercise of an official power or the performance of an official duty or function that

Section 2

- (a) applies to the general public,
- (b) affects a member as one of a broad class of electors, or
- (c) concerns the remuneration and benefits of a member or an officer or employee of the Legislative Assembly;

"spouse" means a person who is married to a member or a person who is living with a member as husband and wife but does not include a husband or a wife who is separated and living apart from a member and who

- (a) has entered into a written agreement under which they have agreed to live apart, or
- (b) is subject to an order of the court recognizing the separation.

Conflict of interest

- 2 (1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.
- (2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

Conflict of interest prohibition

- 3 A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.

Insider information

- 4 A member must not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest.

Influence

- 5 A member must not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest.

Activities on behalf of constituents

- 6 This Act does not prohibit the activities in which members normally engage on behalf of constituents.

Accepting extra benefits

- 7 (1) A member must not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.

- (2) Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.
- (3) If a gift or personal benefit referred to in subsection (2) exceeds \$250 in value, or if the total value received directly or indirectly from one source in any 12 month period exceeds \$250, the member must immediately file with the commissioner a disclosure statement, in the form prescribed by the regulations, indicating
 - (a) the nature of the gift or benefit,
 - (b) its source, and
 - (c) the circumstances under which it was given and accepted.

Former members of Executive Council and former parliamentary secretaries

- 8 (1) The Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission, must not knowingly
- (a) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary, until 24 months have expired after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office,
 - (b) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary who has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit, or
 - (c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former member of the Executive Council or former parliamentary secretary has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit.
- (2) Subsection (1) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.
 - (3) Subsection (1) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.
 - (4) A former member of the Executive Council or former parliamentary secretary must not, unless 24 months have expired after the date when he or she ceased to hold office,
 - (a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission,
 - (b) make representations on his or her own behalf with respect to such a contract or benefit, and

Section 9

- (c) make representations on another person's behalf with respect to such a contract or benefit.
- (5) Subsection (4) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.
- (6) Subsection (4) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.
- (7) A former member of the Executive Council or a former parliamentary secretary must not make representations to the government in relation to any specific ongoing transaction or negotiation to which the government is a party and in which the former member of the Executive Council or former parliamentary secretary was directly involved if the representation would result in the conferring of a benefit not for general application.
- (8) A person who contravenes subsection (4) or (7) commits an offence and is liable, on conviction, to a fine of not more than \$5 000.

Carrying on business

- 9 (1) A member of the Executive Council must not
 - (a) engage in employment or in the practice of a profession,
 - (b) carry on a business, or
 - (c) hold an office or directorship other than in a social club, religious organization or political partyif any of these activities are likely to conflict with the member's public duties.
- (2) A person who becomes a member of the Executive Council must comply with subsection (1) within 60 days of being appointed.
- (3) The commissioner may extend the period referred to in subsection (2) by giving the member a written notice to that effect, and may impose on the extension conditions that the commissioner considers just.
- (4) If a member of the Executive Council complies with subsection (1) (b) by entrusting his or her business to one or more trustees,
 - (a) the provisions of the trust must be approved by the commissioner,
 - (b) the trustees must be persons who are at arm's length with the member and approved by the commissioner,
 - (c) the trustees must not consult with the member with respect to managing the trust property, and
 - (d) the trustees must report in writing all material changes in assets, liabilities and financial interests contained in the trust to the member and the commissioner immediately after the changes have occurred.
- (5) For the purposes of this section, the management of routine personal financial interests does not constitute carrying on a business.

Procedure on conflict of interest

- 10 (1) A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Legislative Assembly or the Executive Council, or a committee of either of them, must, if present at a meeting considering the matter,
- (a) disclose the general nature of the conflict of interest, and
 - (b) withdraw from the meeting without voting or participating in the consideration of the matter.
- (2) If a member has complied with subsection (1), the Clerk of the Legislative Assembly or secretary of the meeting must record
- (a) the disclosure,
 - (b) the general nature of the conflict of interest disclosed, and
 - (c) the withdrawal of the member from the meeting.
- (3) The Clerk of the Legislative Assembly or secretary of the meeting must file the information recorded under subsection (2) with the commissioner,
- (a) in the case of a meeting of the Legislative Assembly or a committee of the Legislative Assembly, as soon as practicable, and
 - (b) in the case of a meeting of the Executive Council or a committee of the Executive Council, as soon as practicable after the Executive Council's decision on the matter which has been the subject of the disclosure is made public.
- (4) The commissioner must keep all information filed under subsection (3) in a central record kept for that purpose and must
- (a) make the central record available for inspection by any person without charge during normal business hours, and
 - (b) on request by any person provide a copy of the record or portion of it on payment of a reasonable copying charge.

Performance of responsibilities by minister

- 11 (1) If, during the exercise of any official power or the performance of any official duty or function by a member of the Executive Council, a matter arises with respect to which the member has a conflict of interest or apparent conflict of interest, the member must
- (a) refrain at all times from attempting to influence the matter, and
 - (b) at any subsequent meeting of the Executive Council or a committee of the Executive Council at which the matter is considered, disclose the general nature of the private interest and withdraw from the meeting without voting or participating in the discussion.
- (2) The Lieutenant Governor in Council may appoint a member of the Executive Council to act in the place of a member referred to in subsection (1) for any matter

Section 12

with respect to which the member referred to in subsection (1) has a conflict of interest or apparent conflict of interest.

Voidability of transaction or procedure

- 12 The failure of any member to comply with section 10 does not of itself invalidate
- (a) any contract or other financial transaction, or
 - (b) any procedure undertaken by the government with respect to a contract or other financial transaction

to which the failure to comply with section 10 relates, but the transaction or procedure is voidable at the instance of the government before the expiration of 2 years from the date of the decision authorizing the transaction, except as against any person who or organization that acted in good faith and without actual notice of the failure to comply with section 10.

Application for restitution

- 13 Despite anything in this Act, if any person, whether or not the person is or was a member, has realized financial gain in any transaction to which a violation of this Act relates, any other person affected by the financial gain, including the government or a government agency, may apply to the Supreme Court for an order of restitution against the person who has realized the financial gain.

Commissioner

- 14
- (1) There must be appointed a commissioner who is an officer of the Legislative Assembly.
 - (2) On the motion of the Premier in the Legislative Assembly and on the recommendation of 2/3 of the members present, the Lieutenant Governor in Council must appoint the person so recommended to the office of commissioner.
 - (3) The commissioner holds office for a term of 5 years and may be reappointed for a further term or terms.
 - (4) The commissioner may be removed or suspended before the end of the term of office by the Lieutenant Governor in Council for cause on the recommendation of the Legislative Assembly.
 - (5) The commissioner must be paid compensation as may be set by the Lieutenant Governor in Council.
 - (6) If
 - (a) the commissioner is removed or suspended or the office of the commissioner becomes vacant when the Legislature is sitting but no recommendation under this Act is made by the Legislative Assembly before the end of that session, or
 - (b) the commissioner is suspended or the office of the commissioner is or becomes vacant when the Legislature is not sitting,the Lieutenant Governor in Council may appoint an acting commissioner.

-
- (7) The appointment of an acting commissioner under this section terminates
 - (a) on the appointment of a new commissioner under subsection (2),
 - (b) at the end of the period of suspension of the commissioner, or
 - (c) immediately after the expiry of 20 sitting days after the day on which he or she was appointed,whichever the case may be and whichever occurs first.
 - (8) The commissioner may employ or retain persons that the commissioner considers necessary and may
 - (a) specify their duties and responsibilities, and
 - (b) establish their remuneration and other terms and conditions of employment, or retainer.
 - (9) The *Labour Relations Code* and the *Public Service Labour Relations Act* do not apply to a person employed or retained under subsection (8).
 - (10) The Lieutenant Governor in Council may order that the *Pension (Public Service) Act* applies to the commissioner and to any person the commissioner employs.

Annual report

- 15 The commissioner must report annually on the affairs of his or her office to the Speaker of the Legislative Assembly who must cause the report to be laid before the Legislative Assembly.

Disclosure statement

- 16
 - (1) Every member must, within 60 days of being elected, and after that annually, file with the commissioner a confidential disclosure statement in the form prescribed by the regulations.
 - (2) The disclosure statement must contain
 - (a) a statement of the nature of the assets, liabilities and financial interests of the member, the member's spouse and minor children, and private corporations controlled by any of them, and
 - (b) any other information that is prescribed by the regulations to be contained in the disclosure statement.
 - (3) After filing a disclosure statement, the member, and the member's spouse if the spouse is available, must meet with the commissioner to ensure that adequate disclosure has been made and to obtain advice from the commissioner on the member's obligations under this Act, and the commissioner may recommend the manner by which the member will comply with those obligations.
 - (4) If any asset, liability or financial interest described in the disclosure statement relates to a corporation, the commissioner must ascertain whether any other corporation is an affiliate of the first named corporation, as determined under section 1 (2) to (6) of the *Company Act*.

Section 17

- (5) If the commissioner determines that there is an affiliate of the first named corporation, he or she must
 - (a) advise the member of the fact, in writing, and
 - (b) mention the fact in the public disclosure statement prepared under section 17.
- (6) After filing a disclosure statement, the member must continue to disclose any material change in the assets, liabilities and financial interests of the member, the member's spouse and minor children and private corporations controlled by any of them by filing a statement of material change with the commissioner within 30 days of the material change.
- (7) In subsection (6), "**material change**" means a material change as defined in the regulations.

Public disclosure statement

- 17 (1) After meeting with the member, and with the member's spouse if the spouse is available, the commissioner must prepare a public disclosure statement containing all relevant information provided by the member, and by the member's spouse if the spouse met with the commissioner, in respect of the member, the spouse and minor children, except
 - (a) the municipal address or legal description of land that is primarily for the residential or recreational use of the member or the member's spouse or minor children, and
 - (b) personal property used for transportation or for household, educational, recreational, social or aesthetic purposes.
- (2) The public disclosure statement must contain a statement of any gifts or benefits that have been disclosed to the commissioner under section 7 (3).
- (3) The commissioner must, as soon as is practicable, file the public disclosure statement with the Clerk of the Legislative Assembly who must
 - (a) make the statement available to any person for inspection without charge and during normal business hours, and
 - (b) provide a copy of the statement on payment of a reasonable copying charge.

Commissioner's opinions and recommendations

- 18 (1) A member may request, by application in writing, that the commissioner give an opinion or recommendation on any matter respecting the obligations of the member under this Act or under section 25 of the *Constitution Act*.
- (2) The commissioner may make such inquiries as the commissioner considers appropriate and provide the member with a written opinion and recommendations.

- (3) If the commissioner is of the opinion that a member has or may have a conflict of interest, the commissioner may, in the recommendations, specify the time by which the member must resolve the matter.
- (4) The opinion and recommendations of the commissioner are confidential, but may be released by the member or with the consent of the member in writing.
- (5) If the commissioner determines that a member has not contravened this Act, that determination is final for all purposes of the Act and any proceeding under the Act, so long as the facts presented by the member to the commissioner under subsection (1) were accurate and complete.

Commissioner's opinion on referred question

- 19
- (1) A member who has reasonable and probable grounds to believe that another member is in contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the compliance of the other member with the provisions of this Act.
 - (2) A member of the public who has reasonable and probable grounds to believe that there has been a contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the alleged contravention.
 - (3) The Executive Council may request that the commissioner give an opinion on any matter respecting the compliance of a member of the Executive Council or a parliamentary secretary with the provisions of this Act or of section 25 of the *Constitution Act*.
 - (4) The Legislative Assembly may request that the commissioner give an opinion on any matter respecting the compliance of a member with the provisions of this Act or of section 25 of the *Constitution Act*.

Special assignments

- 20
- At the request of the Lieutenant Governor in Council or the Legislative Assembly, the commissioner may undertake special assignments that he or she considers appropriate.

Inquiry

- 21
- (1) On receiving a request under section 19, and on giving the member concerned reasonable notice, the commissioner may conduct an inquiry.
 - (2) If the request for an opinion is made under section 19 or the commissioner undertakes a special assignment under section 20, the commissioner has the powers of a commissioner under sections 15 and 16 of the *Inquiry Act*.

Section 22

- (3) If the request for an opinion is made under section 19 (1), the commissioner must report his or her opinion to the Speaker of the Legislative Assembly who must cause the report to be laid before the Legislative Assembly if it is in session or, if not in session, to the Clerk of the Legislative Assembly who must send a copy of it to all members of the Legislative Assembly.
- (4) If it appears to the commissioner that the report may adversely affect the member, the commissioner must inform the member of the particulars and give the member the opportunity to make representations, either orally or in writing, at the discretion of the commissioner, before the commissioner finalizes the report.
- (5) If the commissioner is of the opinion that the member making the application under section 19 (1) had no reasonable and probable grounds for making it, the commissioner may state that in his or her report, and if he or she does so, the commissioner must report the matter to the Speaker who must lay the report before the Legislative Assembly and the Legislative Assembly may, after considering the matter, hold the member in contempt of the Legislative Assembly.
- (6) If the request for an opinion is made under section 19 (3), the commissioner must report his or her opinion to the Secretary of the Executive Council.

Penalties

- 22 (1) If the commissioner finds
- (a) after an inquiry under section 21 that a member has contravened section 3, 4, 5, 7, 8, 9 or 10 (1), or
 - (b) that a member has refused to file a disclosure statement within the time provided by section 16 or that a member has failed to comply with a recommendation of the commissioner under section 16 (3) or 19,
- the commissioner may recommend, in a report that is laid before the Legislative Assembly
- (c) that the member be reprimanded,
 - (d) that the member be suspended for a period specified in the report,
 - (e) that the member be fined an amount not exceeding \$5 000, or
 - (f) that the member's seat be declared vacant until an election is held in the member's electoral district.
- (2) The Legislative Assembly must consider the commissioner's report and respond to it as subsection (3) provides
- (a) within 30 days after it is laid before the Legislative Assembly, or
 - (b) within 30 days after the next session begins if the Legislative Assembly is not in session.

- (3) The Legislative Assembly may order the imposition of the recommendation of the commissioner under subsection (1) or may reject the recommendation, but the Legislative Assembly must not further inquire into the contravention or impose a punishment other than the one recommended by the commissioner.

Protection of commissioner

- 23 No action of any kind lies against the commissioner for anything he or she does under this Act.

Appropriation

- 24 Money required for the operation of the office of the commissioner may be paid out of the consolidated revenue fund.

Offence Act

- 25 Section 5 of the *Offence Act* does not apply to this Act.

Power to make regulations

- 26 Subject to the approval of the Lieutenant Governor in Council, the commissioner may make regulations prescribing any matter that is contemplated in this Act to be prescribed by regulations.



*Amendments Not in Force***MEMBERS' CONFLICT OF INTEREST ACT**

RSBC 1996, chapter 287

Section	Citation
9	RS1996 (Supp) -287-1; 1992-64-5.
Transitional.....	RS1996 (Supp) -287-2; 1992-64-14.

Legislative History**MEMBERS' CONFLICT OF INTEREST ACT**

RSBC 1996, chapter 287

Section	History
1	1990-54-1; 1992-64-1.
2	1990-54-2; 1992-64-2.
3	1990-54-2.1; 1992-64-3.
4	1990-54-3.
5	1990-54-4.
6	1990-54-5.
7	1990-54-6.
8	1990-54-7; 1992-64-4.
9	1990-54-8.
10	1990-54-9; 1992-64-6.
11	1990-54-9.1; 1992-64-7.
12	1990-54-9.2; 1992-64-7.
13	1990-54-9.3; 1992-64-7.
14	1990-54-10; 1992-82-165.
15	1990-54-11.
16	1990-54-12; 1992-64-8.
17	1990-54-13.
18	1990-54-14; 1992-64-9.
19	1990-54-15; 1992-64-10.
20	1990-54-15.1; 1992-64-11.
21	1990-54-16; 1992-64-12.
22	1990-54-17; 1992-64-13.
23	1990-54-18.
24	1990-54-19.
25	1990-54-20.
26	1990-54-21.

EXPLANATORY NOTE

Amendments Not in Force: If there are any legislative changes to the Act that are not in force as of December 31, 1996, these are identified in *italics* at the beginning of the historical table. The "Section" column identifies the affected provisions of the Act. The "Citation" column identifies the amending legislation by its citation in the 1996 Statute Revision Supplement.

Legislative History: The second part of the table provides a legislative history of each section of the Act between the 1979 Statute Revision and the 1996 Statute Revision. The "Section" column identifies all sections of the Act in force on December 31, 1996. The "History" column for each section begins with the citation of the section immediately before the 1996 Statute Revision. This is followed by a list of citations for the legislation that enacted or amended the section between the 1979 Statute Revision and the 1996 Statute Revision (if a section was repealed and replaced during that period, these last citations begin at the most recent replacement).

Legislative citations have the format of "year-chapter-section".

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MEMBERS' CONFLICT OF INTEREST ACT

CHAPTER 287

1 Section 9 of the Members' Conflict of Interest Act is amended

(a) by repealing subsections (1) and (2) and substituting the following:

(1) A member of the Executive Council or a parliamentary secretary must not

(a) engage in employment or in the practice of a profession, or

(b) carry on a business

if any of these activities is likely to conflict with the member's or parliamentary secretary's public duties.

(1.1) A member of the Executive Council or a parliamentary secretary must not hold an office or directorship other than in a social club, religious organization, political party or government corporation.

(2) A person who becomes a member of the Executive Council or a parliamentary secretary must comply with subsections (1) and (1.1) within 60 days of being appointed. ,

(b) in subsection (3) by adding "of the Executive Council or the parliamentary secretary" after "the member", and

(c) by repealing subsection (4) and substituting the following:

(4) If a member of the Executive Council or a parliamentary secretary complies with subsection (1) (b) by entrusting his or her business to one or more trustees,

(a) the provisions of the trust must be approved by the commissioner,

(b) the trustees must be persons who are at arm's length with the member or with the parliamentary secretary and who are approved by the commissioner,

(c) the trustees must not consult with the member or the parliamentary secretary with respect to managing the trust property, and

(d) the trustees must report in writing all material changes in assets, liabilities and financial interests contained in the trust to the member or the parliamentary secretary and to the commissioner immediately after the changes have occurred.

1992-64-5.

Transitional for amendments in section 1

2 A person who is a member of the Executive Council or a parliamentary secretary on the date that section 1 of this Supplement comes into force must comply with section 9 (1) and (1.1) of the *Members' Conflict of Interest Act* within 60 days of that date.

1992-64-14.

Commencement

- 3 Sections 1 and 2 come into force by regulation of the Lieutenant Governor in Council.
1992-64-15.

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